

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF OKLAHOMA**

CHAD ANDREW LUTE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Case No. CIV-21-354-J
	)	
JIMMY MARTIN,	)	
	)	
Respondent.	)	

**ORDER**

Petitioner, a state prisoner appearing pro se, filed a Petition for writ of habeas corpus under 28 U.S.C. § 2254 in the Northern District of Oklahoma [Doc. No. 1] and it was transferred to this Court [Doc. No. 2]. The matter was then referred for initial proceedings to United States Magistrate Judge Suzanne Mitchell consistent with 28 U.S.C. § 626(b)(1)(B), (C). Judge Mitchell issued a Report and Recommendation, noting Petitioner’s failure to cure his application to proceed in forma pauperis and recommending the Petition be dismissed without prejudice for failure to prosecute and/or comply with court-orders. [Doc. No. 7]. Despite being cautioned that he must file any objection no later than June 8, 2021, *see id.*, Petitioner did not object and has waived his right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *See Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

Accordingly, the Court ADOPTS the Report and Recommendation [Doc. No. 7] and DISMISSES the Petition for writ of habeas corpus [Doc. No. 1] without prejudice.

Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, the Court must issue or deny a certificate of appealability (COA) when it enters a final order adverse to a petitioner. A COA may issue only if the petitioner “has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). “A petitioner satisfies this standard by

demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Petitioner has failed to make either showing and the Court denies the COA.

A separate judgment shall be entered.

IT IS SO ORDERED this 22<sup>nd</sup> day of June, 2021.



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BERNARD M. JONES  
UNITED STATES DISTRICT JUDGE